

OPPOSED(368)
2/12/01

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

TERRANCE MONTAGUE,	:	
Plaintiff	:	
	:	No. 1:CV-00-0895
v.		
	:	(M.J. Smyser)
ROBERT W. MEYERS, et al.,	:	
Defendants	:	

**DEFENDANTS' RESPONSE TO PLAINTIFF'S
THIRD MOTION TO SUPPLEMENT THE COMPLAINT**

**FILED
HARRISBURG**

FEB - 9 2001

MARY E. D'ANDREA, C
Per _____
GTS
DEPUTY CLERK

Introduction

In this civil action for damages brought pursuant to 42 U.S.C. § 1983, plaintiff has filed a third motion to supplement his complaint in two weeks. The first motion, which was dated January 20, 2001, was responded to by defendants by memorandum filed February 2, 2001. The second motion, which was dated January 26, 2001, was responded to by defendants by memorandum filed February 6, 2001. The third motion is dated February 2, 2001. This is defendants' response to plaintiff's motion to supplement dated February 2, 2001.

Argument

The law applicable to the standard governing the court's decision on a motion to supplement is set forth in defendants' memoranda filed February 2 and 6, 2001, and will not be repeated here in the interest of brevity. What does need to be said, however, is that by filing three (3) motions to supplement in a two-week period, plaintiff appears to be engaging in abusive litigation tactics. The court may exercise its discretion in such a case to prevent plaintiff's harassment of defendants and deny plaintiff's motion on this basis alone. See, e.g., Averbach v.

Rival Manufacturing Co., 737 F.Supp. 330, 334 (E.D. Pa. 1990) (filing of repeated meritless motions warrants denial and sanctions against filing party).

Notwithstanding plaintiff's motives, however, if plaintiff truly wants to interject the issue of his mental health status into this case by challenging the Department of Corrections' decision to transfer him temporarily from SCI-Rockview to SCI-Waymart for medical reasons, defendants will not oppose plaintiff's request.

Respectfully submitted,

D. MICHAEL FISHER
Attorney General

By:


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DATE: February 8, 2001

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TERRANCE MONTAGUE, :
Plaintiff :
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ROBERT W. MEYERS, et al., :
Defendants :
:

CERTIFICATE OF SERVICE

I, GREGORY R. NEUHAUSER, Senior Deputy Attorney General for the Commonwealth of Pennsylvania, Office of Attorney General, hereby certify that on February 9, 2001, I caused to be served a true and correct copy of the foregoing document Defendants' Response to Plaintiff's Third Motion to Supplement the Complaint by depositing it in the United States mail, first-class postage prepaid to the following:

Terrance Montague, BZ-2761
SCI-Rockview
Box A
Bellefonte, PA 16823-0820



GREGORY R. NEUHAUSER
Senior Deputy Attorney General